

July 18, 2014

The Honorable Janet L. Sanders
c/o Antitrust Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Re: Commonwealth of Massachusetts v. Partners Healthcare System, Inc., et al., Superior Court
Civil Action No. 14-2033-BLS

Dear Judge Sanders:

I am writing this letter to advocate for the addition of language to the proposed settlement in the above-captioned case to protect people with severe mental illness. I am President of the National Alliance on Mental Illness of Massachusetts ("NAMI Mass.")*. NAMI Mass. is the largest membership organization in Massachusetts dedicated to education, support and advocacy on behalf of people with mental illness and their families. We are part of a national membership network which has since 1979 worked for improvement in mental health treatment. The proposed settlement has the potential to limit access to inpatient and outpatient services in communities north of Boston. Because these services are inadequate generally, the ripple effect could well be felt throughout the state. Such impacts are clearly against the public interest, and therefore deserve your attention.

My discussions with mental health providers suggest that there is actually a consensus on the underlying problems that prompt my letter. Specifically, I believe every hospital system affected by this proposed settlement, including Partners, agrees that the adequacy of inpatient behavioral health beds (also referred to herein as psychiatric beds) is a matter of serious concern. That is why it is so regrettable that in the entire settlement document, there is no reference to the problem, much less an attempt to alleviate legitimate concerns of both providers and patients.

The potential impacts from the proposed settlement operate on at least two levels: (1) the direct impact on access to behavioral health services; and (2) the indirect but real danger that financial impacts on the system overall will lead to a loss of inpatient psychiatric beds because they are the most under-reimbursed beds in the system.

1. Direct Impact on Access

The Preliminary Report of the Health Policy Commission (HPC) reviewing the Partners HealthCare System's Proposed Acquisition of Hallmark Health Corporation, dated July 2, 2014, leaves no doubt that the access problem is a serious one. Key excerpts follow:

To further examine area service capacity and need, the HPC studied boarding of patients in emergency departments (EDs) in the region. Specifically, the HPC examined the number of patients who visited regional emergency departments with a behavioral health need and had to wait over 12 hours for an inpatient admission. This showed that although only about 5.9% of emergency department patients have diagnosed behavioral health-related conditions, these patients are disproportionately represented among ED boarders; over half of patients who boarded at area hospitals had a behavioral health diagnosis. This data suggests that additional inpatient and outpatient behavioral health capacity is likely necessary in the region. . . . (p. 35) (Emphasis added)

The structure of any transaction that aims to transform care delivery should reflect consideration of the scope and mix of services currently available, the allocation of resources necessary to support both existing and new proposed services, and the alignment of services with community need. Significant shifts in the location and types of services provided, as proposed here, can raise access concerns, particularly for vulnerable populations. As discussed in Section III.C.3, Hallmark and NSMC hospitals have higher government payer mix than other area community hospitals and provide a significant share of behavioral health services to their local communities; it is important to consider any adverse impact to these vulnerable populations.

We evaluated the parties' plans to improve access to certain services as well as their potential impact on the vulnerable patient populations that Hallmark and NSMC serve, and found: . . . Relocating inpatient behavioral health services may have an adverse impact on access to those services for vulnerable populations. (p. 67)(Emphasis added)

[W]hile the parties have indicated their commitment to enhancing behavioral health services in line with community need, they have not yet made decisions regarding any increase in inpatient behavioral health beds, any minimum number of new behavioral health clinicians, or any expansion in outpatient, intensive outpatient, or partial hospitalization behavioral health services. . . . (p. 69)(Emphasis added)

(Footnotes omitted)

NAMI Mass. believes that the settlement documents should include language such as the following to alleviate concerns about adverse impact on access to services:

- Partners will at a minimum ensure that relocation of inpatient behavioral health services as part of its overall design will have no adverse impact on the availability of these services on those geographic areas currently served by Hallmark.

In addition, the HPC states that “[t]he parties are considering up to 25 additional behavioral health beds at Hallmark-MWH for addiction services and short stay admissions, but have not committed to any specific increase in beds to address evidence that there is likely insufficient behavioral health capacity in the region.” P. 69, n. 246. NAMI Mass. urges that the settlement documents add language cementing the addition of these badly needed beds.

Finally, it has been reported publicly by Partners, through the North Shore Medical Center, that the renovation of Union Hospital to develop a Center of Excellence in Psychiatry and Behavioral Health will result in a net increase of 17 behavioral health beds, from 98 to 115. That increase, if included as part of the settlement, would further allay concerns about adequate bed capacity.

2. The Financial Impact of the Settlement on Behavioral Health Beds

The nub of the problem is explained by the HPC on pp. 53-54 of its July 2d Preliminary Report:

We found consistent and statistically significant results indicating that changes in referral patterns will be more complex than a one-way redirection of care from Partners AMCs to its community hospitals. Instead of care redirection exclusively from higher-priced Partners AMCs, community hospitals owned by Partners receive volume from lower-priced competitors as well, such as other community hospitals and non-Partners AMCs. Our analysis shows that Hallmark is likely to increase its inpatient volume as a Partners hospital, but that this new volume is more likely to come from net volume reductions at non-Partners hospitals than from any net change in volume at the Partners AMCs. Specifically we estimate that of the net volume increase at Hallmark, about 60% will likely derive from net volume reductions at non-Partners community hospitals and about 40% from net volume reductions at non-Partners AMCs, with no statistically significant change in net volume of patients using Partners AMC and community hospitals.

There is no practical dispute that if there is a drain of beds from community hospitals, as predicted by the HPC, they will be non-psychiatric beds, which account for substantially higher per bed revenues than psychiatric beds -- these patients are disproportionately insured by higher-paying commercial insurers, while the lion's share of psychiatric inpatients rely on lower-paying public insurance. The impact on psychiatric beds is clear. If unsubsidized by non-behavioral bed revenues, they will close. NAMI Mass. has opposed several psychiatric bed closures or reductions over the past 15 years; in every case the hospitals stated that shrinking revenues in other areas was making it impossible to sustain underfunded psychiatric beds.

It is ironic in this regard that one of the two instances where bed closure was averted (the other being in Worcester) happened in 2001, when Cambridge Health Alliance (then Cambridge Hospital) stepped in to acquire and maintain Whidden Hospital in Everett (now "the CHA Whidden Campus"). That bold move saved 44 crucial inpatient behavioral health beds. Now these same beds are among the most apt to close if the HPC's predictions are correct.

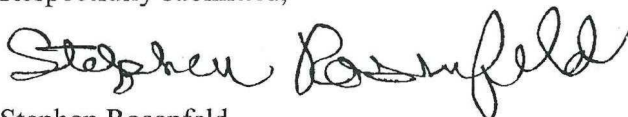
Thus, the HPC scenario promises more trouble for people with severe mental illness. If beds close north of Boston, those people will have to seek out beds elsewhere in the state, where inadequacy of current beds is well-documented. There is no doubt that emergency department boarding will worsen, and emergency room boarding of people in emotional crisis is a true disaster.

These potential impacts are against the public interest.

We are in no position to advocate disapproval of the settlement. The overall anti-trust issues are large and complex, and out of our realm, in more ways than one. What we are asking is that provision be made to protect behavioral health beds, however the proposed settlement is dealt with otherwise.

Therefore, NAMI Mass. requests that the Court require the parties to consider how best to protect the current level of behavioral health beds from any further erosion on account of the settlement. NAMI Mass. has suggestions as to how that might be done, based on admittedly imperfect information, and would appreciate the opportunity, along with other interested persons and organizations, to consult with the parties.

Respectfully submitted,



Stephen Rosenfeld

President, NAMI Massachusetts

Cc: Christopher K. Barry-Smith, Assistant Attorney General
William T. Matlack, Assistant Attorney General
Brent L. Henry, Vice President and General Counsel, Partners Health Care System, Inc.
Michael L. Blau, Counsel for South Shore Health and Education Corp.
Charles R. Whipple, Counsel for Hallmark Health Corp.

VIA EMAIL

* NAMI Mass. board member Marylou Sudders also is a Health Policy Commission board member. In order to avoid a conflict of interest in this matter, real or perceived, she has abstained from participation in this submission to the Court.